

1 FOSTER & HAUER, PLC  
2 5110 N. 44<sup>th</sup> St., Ste. 200L  
3 Phoenix, AZ 85018  
4 (602) 343-1492 (Office)  
5 (480) 365-0949 (Facsimile)  
6 jon@fosterhauer.com

7 Jonathan E. Hauer, State Bar #023928  
8 Attorney for Plaintiff

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Corinne Ricca, a married woman,

Plaintiff,

vs.

McFadden/Gavender Advertising, Inc., an  
Arizona corporation,

Defendant.

Case No.:

**COMPLAINT**

**(Jury Trial Requested)**

Plaintiff alleges:

**NATURE OF THE CASE**

1. Plaintiff brings this action against Defendant for unlawful failure to pay overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and specifically the overtime provision of the Act found at §207(a).

2. For at least three (3) years prior to the filing of this action, Defendant had a consistent policy and practice of requiring its employees to work in excess of forty (40) hours per week without paying them time and a half for hours worked over forty (40) hours per week.

1           3.     For at least three (3) years prior to the filing of this action, Plaintiff worked at  
2 least fifteen (15) hours in excess of forty (40) hours per week and was not paid time and a half.

3           4.     For at least three (3) years prior to the filing of this action, Defendants had a  
4 consistent policy and practice of misclassifying certain employees as exempt employees.

5           5.     Plaintiff seeks to recover unpaid overtime compensation and an equal amount of  
6 liquidated damages, including interest thereon, statutory penalties, attorneys' fees and costs  
7 pursuant to 29 U.S.C. §216(b).  
8

9                                   **JURISDICTION AND VENUE**

10          6.     This action arises under § 16(b) of the Fair Labor Standards Act ("FLSA"), 29  
11 U.S.C. §216(b). The jurisdiction of the Court over this matter is founded upon 28 U.S.C. §§  
12 1331 and 1337, as well as pursuant to the FLSA under 29 U.S.C. § 216(b).

13          7.     This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.  
14 §§ 2201 and 2202.

15          8.     Venue is proper in the United States District Court for the District of Arizona  
16 pursuant to 28 U.S.C. § 1391, because Defendant is headquartered in Arizona and because a  
17 substantial part of the events giving rise to Plaintiff's claim occurred in this district.  
18

19                                   **PARTIES**

20          9.     At all times material hereto, Plaintiff was and continues to be a resident of Pima  
21 County, Arizona.

22          10.    At all times material hereto, McFadden/Gavender Advertising, Inc. was  
23 incorporated in the State of Arizona and has its principal place of business at 2951 N. Swan  
24 Rd., Suite 185, Tucson, AZ 85712.  
25



1           20. Plaintiff was a non-exempt employee.

2           21. Plaintiff was not a manager.

3           22. Plaintiff did not exercise discretion and independent judgment with respect to  
4 matters of significance.

5           23. Plaintiff had no control over job duties and responsibilities and did what she was  
6 instructed to do by Defendant.

7           24. Plaintiff's work hours were dictated by the projects that Defendant required her  
8 to complete in a week.

9           25. Plaintiff's duties were an integral part of Defendant's operation.

10          26. Plaintiff had no independent business organization or operation.

11          27. Plaintiff made no investment in facilities.

12          28. The Department of Labor's Wage and Hour Division Opinion Letter FLSA2006-  
13 45, attached as Exhibit A, found that senior copy editors with more managerial responsibilities  
14 and whose positions involved greater discretion than Plaintiff did not meet the Fair Labor  
15 Standards Act's administrative exemption.  
16

17          29. From January 2010 and continuing until Plaintiff separated from Defendant in  
18 May 2012, Defendant failed to properly compensate Plaintiff for any of her overtime hours.  
19 During this time, Plaintiff was required to work an average of 55 hours per week for fear of  
20 losing her job.  
21

22          30. Upon information and belief, McFadden/Gavender Advertising, Inc. has not kept  
23 any records of its employees hours worked.

24          31. McFadden/Gavender Advertising, Inc.'s failure and/or refusal to properly  
25

1 compensate Plaintiff at the rates and amounts required by the FSLA were/was willful.

2 32. McFadden/Gavender Advertising, Inc. refused and/or failed to properly disclose  
3 to or apprise Plaintiff of her rights under the FLSA.

4 33. Plaintiff has retained the law firm of Foster & Hauer, PLC, to represent her in  
5 this litigation and has agreed to pay a reasonable fee for the services rendered in the  
6 prosecution of this action on her behalf.

7  
8 **COUNT ONE**  
9 **VIOLATION OF FAIR LABOR STANDARDS ACT**

10 34. Plaintiff incorporates and adopts paragraphs 1 through 32 above as if fully set  
11 forth herein.

12 35. While employed at Defendant McFadden/Gavender Advertising, Inc., Plaintiff  
13 consistently and regularly worked at least 15 hours of overtime per week.

14 36. McFadden/Gavender Advertising, Inc. has intentionally failed and/or refused to  
15 pay Plaintiff overtime according to the provisions of the FLSA.

16 37. McFadden/Gavender Advertising, Inc., further has engaged in a widespread  
17 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in  
18 accordance with § 207 of the FLSA.

19 38. As a result of McFadden/Gavender Advertising, Inc.'s violations of the FLSA,  
20 Plaintiff has suffered damages by failing to receive compensation in accordance with § 207 of  
21 the FLSA.

22 39. Under 20 U.S.C. §216 Defendant is liable to Plaintiff for an amount equal to one  
23 and one-half times her regular pay rate for each hour of overtime worked per week.  
24  
25

1           40. In addition to the amount of unpaid wages owed to Plaintiff, she is also entitled  
2 to recover an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b).

3           41. McFadden/Gavender Advertising, Inc.'s actions in failing to compensate  
4 Plaintiff, in violation of the FLSA, were willful.

5           42. McFadden/Gavender Advertising, Inc., has not made a good faith effort to  
6 comply with the FLSA.

7           43. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §  
8 216(b).  
9

10           WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor  
11 against Defendant:

- 12           a. Awarding Plaintiff overtime compensation in the amount due to her for all of  
13 Plaintiff's time worked in excess of forty (40) hours per work week at an  
14 amount equal to one and one-half times Plaintiff's regular rate while at work  
15 at Defendant McFadden/Gavender Advertising, Inc.;
- 16           b. Awarding Plaintiff liquidated damages in an amount equal to the overtime  
17 award;
- 18           c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the  
19 litigation pursuant to 29 U.S.C. § 216(b);
- 20           d. For Plaintiff's costs incurred in this action;
- 21           e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all  
22 amounts set forth in subsections (a) and (b) above from the date of the  
23 payment due for that pay period until paid in full;  
24  
25

- 1 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all  
2 awards from the date of such award until paid in full;  
3 g. For such other and further relief as the Court deems just and proper.

4 **COUNT TWO**  
5 **DECLATORY JUDGMENT**

6 44. Plaintiff incorporates and adopts paragraphs 1 through 41 above as if fully set  
7 forth herein.

8 45. Plaintiff and Defendant have a Fair Labor Standards Act dispute pending.

9 46. The Court has jurisdiction to hear Plaintiff's request for declaratory relief  
10 pursuant to the Declaratory Judgment Act 28 U.S.C. §§ 2201-2202.

11 47. Plaintiff may obtain declaratory relief.

12 48. Defendant employed Plaintiff.

13 49. Defendant is an enterprise covered by the FLSA.

14 50. Plaintiff was individually covered by the FLSA.

15 51. Plaintiff is entitled to overtime wages pursuant to 29 U.S.C. §207.

16 52. Plaintiff is entitled to an equal amount of liquidated damages as Defendant's  
17 policy of failing to pay proper overtime compensation remains in effect.

18 53. Defendant did not rely on a good faith defense in its failure to abide by the  
19 provisions of the FLSA and failure to pay overtime compensation.  
20

21 54. It is in the public interest to have these declarations of rights recorded as  
22 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the  
23 legal relations at issue, preventing future harm, and promoting the remedial purposes of the  
24  
25

1 FLSA.

2 55. The declaratory judgment action further terminates and affords relief from  
3 uncertainty, insecurity, and controversy giving rise to the proceeding.

4 WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor  
5 against Defendants:

- 6 a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices  
7 complained of herein are in violation of the overtime provisions of the FLSA  
8  
9 b. For Plaintiff's costs incurred in this action.  
10  
11 c. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the  
12 litigation pursuant to 29 U.S.C. §216(b);  
13  
14 d. For such other and further relief as the Court deems just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby requests that upon trial of this action, all issues be submitted to and  
17 determined by a jury except those issues expressly reserved by law for determination by the  
18 Court.

19 Dated: May 29, 2013

Respectfully submitted,

20 **FOSTER & HAUER, PLC**

21  
22 /s/ Jonathan Hauer

23 Jonathan Hauer  
24 Attorney for Plaintiff  
25